IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**CASE NO. 2:07-CV-686**
	)	
THE CITY OF MONTGOMERY, et al.,	)	
	)	
	)	
Defendants.	)	
	)	

DEFENDANTS' RESPONSE TO PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants, City of Montgomery ("City"), Bobby Bright, and Art Baylor, in response to Plaintiff's Motion for Partial Summary Judgment, shows unto the Court that the Motion for Partial Summary Judgment filed by Plaintiff Candida Stokes ("Ms. Stokes") on the issue of interference under FMLA is due to be denied; and, as urged in its own motion and brief, the Defendants are entitled to summary judgment dismissing all claims against it. In support of said response, Defendants state the following:

I. PLAINTIFF HAS FAILED TO MEET THE REQUIREMENTS FOR SUMMARY JUDGMENT REQUIRED BY THE FEDERAL RULES OF CIVIL PROCEDURE RULE 56

The moving party asking for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any,' which demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) at 323.

Additionally, Fed. R. Civ. P. 56(c), imposes the additional requirement that the moving party show that they are entitled to a judgment as a matter of law.

Ms. Stokes has failed to establish that there is no genuine issue of material fact and that she is entitled to judgment as a matter of law. Accordingly, the Plaintiff's motion for partial summary judgment is due to be denied.

A. THERE IS A GENUINE ISSUE OF MATERIAL FACT WITH REGARD TO PLAINTIFF'S FMLA INTEREFERENCE CLAIM

Ms. Stokes's motion for partial summary judgment relies heavily on the assertion that the Defendants interfered with her rights under FMLA when the Defendants failed to restore her to her former position as a police officer. *Pl's Mem.* at 19. However, when an employee returns from leave that was granted pursuant to FMLA, the employer is not required to restore the employee to the identical position that the employee held prior to their leave. 29 U.S.C. § 2614(a). The FMLA expressly grants employers the opportunity to restore an employee to "an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment." 29 U.S.C. § 2614(a)(1)(B).

An equivalent position is one that is "virtually identical to the employee's former position in terms of pay, benefits, and working conditions." 29 C.F.R. 825.215(a). Equivalency of pay is satisfied when the employer restores the employee to a position which provides the same unconditional pay increases, the same or equivalent pay premiums, and overtime. 29 C.F.R. 825.215(c)(1). Equivalency of benefits is satisfied when the employer restores the employee to an equivalent position and makes available all benefits available by the employer to its employees. 29 C.F.R. 825.215(d). Finally, equivalency of conditions and terms of employment are satisfied when the employer restores the employee to a position with "substantially similar duties, conditions, responsibilities, privileges and status as the employee's original position." 29 C.F.R. 825.215(e). These similar conditions and terms of employment include same geographically proximate worksite, return to the same shift or an equivalent work schedule, and an equivalent opportunity of bonuses, profit-sharing, and other similar discretionary and non-discretionary payments. *Id.*

The Plaintiff's entire interference claim rests on the assertion that Ms. Stokes was not restored to her former position or an equivalent one; however, the Defendants, as Ms. Stokes' employer, restored her to an equivalent position at the expiration of her FMLA leave. It is undisputed that the Defendants did not restore Ms. Stokes to the identical position that she held prior to being granted leave under FMLA. Before Ms. Stokes' suicide attempt, she served as a Police Corporal with the Montgomery Police Department. *DX* 1. At the expiration of Ms. Stokes' FMLA she was placed on Administrative Leave with pay. *DX* 2. The Defendants then placed Ms. Stokes on Administrative Duty.

The Plaintiff argues that Ms. Stokes' administrative duty position was drastically different than the position she held prior to FMLA leave. *Pl's Mem.* at 24. Specifically, the Plaintiff argues that:

> She was not receiving the same pay. . . . When the City placed Stokes on administrative duty, Stokes was not allowed to wear a uniform. She was not allowed to carry a badge. The City forbade Stokes from carrying her service weapon. On administrative duty Stokes was required to sit at the back desk and do paperwork all day. Her duties were substantially different.

Pl.'s Mem. at 24. Although the Plaintiff makes these assertions, she does not provide any authority to support them.

When Ms. Stokes was placed on administrative duty she was receiving the same rate of pay as she did prior to her FMLA leave. *DX* 3. Additionally, Ms. Stokes retained the same benefit package she had prior to taking leave. *DX* 3. Finally, Ms. Stokes was required to report to the same location for work and worked the same shift as she did prior to taking leave. *DX* 3. Ms. Stokes' rate of pay, benefits, and terms and condition of employment were "virtually identical" as they were prior to taking leave; therefore, a genuine issue of material fact exists with regard to the equivalency of Ms. Stokes' restored position.

Because there is a genuine issue of material fact regarding the equivalency of Ms. Stokes's restored employment, the Plaintiff's Motion for Partial Summary Judgment is due to be denied.

Submitted this the 26th day of August, 2008.

/s/ Michael D. Boyle
MICHAEL D. BOYLE(BOY032)
Attorney for Defendants

City of Montgomery
Legal Division
P. O. Box 1111
Montgomery, AL 36101-1111
Phone: (334) 241-2050
FAX: (334) 241-2310

CERTIFICATE OF SERVICE

I hereby certify that foregoing *Defendant's Response to Plaintiff's Motion for Partial Summary Judgment* has been served upon the following by electronic filing/notification of the United States District Court Middle District of Alabama on the 12th day of August, 2008, properly addressed to all as follows:

Deborah Mattison

/s/ Michael D. Boyle
Of Counsel

Form 10

Submit in Triplicate

CITY AND COUNTY OF MONTGOMERY
PERSONNEL DEPARTMENT
RECOMMENDATION FOR PERSONNEL ACTION

Department/Division Police **Date** January 18, 2006

Name of Employee Candida L. Stokes **Effective Date** 12/19/05

Social Security # 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 **Classification** Police Corporal **Job Code** 8211

Item 2 requires the signature of both department heads.

Items 2, 3, 4, 5, 6, 15 require approval of Personnel Director before action is official. Items 3, 4, 5, 7 must have copy of letter to employee attached. Item 8 should have copy of letter of resignation.

1. Transfer within department	( )	9. Retirement	( )
2. Transfer to another department	( )	10. Separation by death	( )
3. Demotion	( )	11. Expiration by Temporary Appointment	( )
4. Layoff	( )	12. Return Leave Without Pay	( )
5. Dismissal	( )	13. Return from Military Leave	( )
6. Leave without pay	( )	14. Change of Name	( )
7. Suspension	( )	15. Change in Salary	( )
8. Resignation	( )	16. FMLA	(X)

ITEMS AFFECTED BY ACTION	FROM	TO
Department (Items 1 & 2)		
Class. & Salary (Items 1, 2, 3)		
Dates (Items 6 & 7)		
Name (Item 14)	X 10 -	X 7
Amount (Item 15)		
Other (Item 16)	Period of FMLA: December 19, 2005 - January 12, 2006	

Funds are available [signature] Disbursing Officer **Date** JAN 20 2006

Explanation and remarks (Give reason for any action which is not self-explanatory)

Employee placed on FMLA due to personal illness. FMLA package attached.

(Signed) 1. Bobby N. Bright — Appointing Authority — Date JAN 24 2006

2. ______________________ Date ______

3. [signature] Date 01/18/06

4. Barbara M. Montoya — Personnel Director — Date JAN 26 2006

PER 300-419
04/14/99

Form 10 **Submit in Triplicate**

CITY AND COUNTY OF MONTGOMERY
PERSONNEL DEPARTMENT
RECOMMENDATION FOR PERSONNEL ACTION

Department/Division Police **Date** January 26, 2006

Name of Employee Candida S. Stokes **Effective Date** January 13, 2006

Social Security # 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 **Classification** Police Corporal **Job Code** 8211

Item 2 requires the signature of both department heads.

Items 2, 3, 4, 5, 6, 15 require approval of Personnel Director before action is official. Items 3, 4, 5, 7 must have copy of letter to employee attached. Item 8 should have copy of letter of resignation.

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2. Transfer to another department ( )
3. Demotion ( )
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5. Dismissal ( )
6. Leave without pay ( )
7. Suspension ( )
8. Resignation ( )
9. Retirement ( )
10. Separation by death ( )
11. Expiration by Temporary Appointment ( )
12. Return Leave Without Pay ( )
13. Return from Military Leave ( )
14. Change of Name ( )
15. Change in Salary ( )
16. Administrative Leave With Pay (X)

ITEMS AFFECTED BY ACTION	FROM	TO
Department (Items 1 & 2)		
Class. & Salary (Items 1, 2, 3)		
Dates (Items 6 & 7)		
Name (Item 14)		
Amount (Item 15)		
Other (Item 16)	January 13, 2006	January 24, 2006

Funds are available ______________ Disbursing Officer **Date** JAN 30 2006

Explanation and remarks (Give reason for any action which is not self-explanatory)

Employee placed on Administrative Leave With Pay pending psychological evaluation.

(Signed) 1. ______________ Appointing Authority Date JAN 27 2006

2. ______________ Date

3. ______________ Date 1-26-2006

4. ______________ Personnel Director Date JAN 31 2006

PER 300-419
04/14/99

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	)	
Plaintiff,	)	
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v.	)	**CASE NO. 2:07-CV-686**
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	)	
CITY OF MONTGOMERY,	)	
BOBBY BRIGHT, ART BAYLOR	)	
	)	
Defendant.	)	

AFFIDAVIT OF LT. COL. KEVIN J. MURPHY

STATE OF ALABAMA)

COUNTY OF MONTGOMERY)

Before me, a Notary Public in and for said State and County, personally appeared LT. COL. KEVIN J. MURPHY and, after first being duly sworn by me, did depose and state as follows:

My name is KEVIN J. MURPHY and I am over nineteen years of age. I have first hand knowledge of the facts contained in this affidavit, and am competent to testify thereto.

1. I was the Division Commander over Candida Stokes from her date of hire until her date of termination.

2. When Candida Stokes returned from FMLA she returned at the same rate of pay she was prior to taking leave.

3. When Candida Stokes returned from FMLA she returned with the same benefit package she had prior to taking leave.

4. When Candida Stokes returned from FMLA she reported to the same location she had prior to taking leave.

5. When Candida Stokes returned from FMLA she worked the same shift she had prior to taking leave.

6. I recommended her termination due to her violation of Departmental Rules and Regulations and future potential liability.

7. Based on the facts and circumstances of her case, it was my intention to recommend her termination prior to her returning to duty.

I have read the above and foregoing affidavit consisting of two (2) pages and state that it is true and correct to my present knowledge and information.

Further affiant saith not.

KEVIN J. MURPHY

SWORN to and SUBSCRIBED before me this 26th day of August, 2008.

Notary Public
My commission expires 10/16/09